IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8413 OF 2006

Canara Bank .. Petitioner.

V/s.

M/s.Kadri Builders & Anr. .. Respondents.

Mr.P.K.Hushing i/by M/s.Satpute & Co. & P.K.Hushing for the Petitioner.

CORAM : S. A. BOBDE, J.

DATED : 20th JULY, 2007.

P.C. :-

. By this petition, the petitioners have challenged the order of the division bench of the Small Causes Court, refusing to condone the delay of about 822 days in filing appeal against the dismissal of the plaintiffs'/ petitioners' suit for possession of the premises in pursuance of the agreement.

2. The trial court dismissed the plaintiffs suit on 3/4th of April 2003. The plaintiffs do not appear to have taken any concrete steps in time for filing the appeal which was filed on 07.02.2006. In the meanwhile according to the plaintiffs they were seeking opinion after opinion, whether they should file an appeal.

According to them they were not satisfied by the advise of one advocate because that advocate had been telling them that because of the non-availability of the protection under the Maharashtra Rent Control Act, 1991, the plaintiffs cannot succeed. Thereafter, they apparently approached an Advocate who advised them on 08.09.2004 that they have a good case but the appeal is delayed. It is interesting to note that even after they were advised that they have a good case, the plaintiffs did not file appeal for almost a year and half. According to them they were seeking permission from a higher authority. In the circumstances, the learned division bench of the Small Causes Court has rejected the application for condonation of delay.

3. Considering the reasons given by the petitioners and well reasoned order of the division bench of the Small Causes Court, this appears to be no case to interfere with the said order. The petitioners are and indeed entitled to condonation of delay upon sufficient cause been shown. However, it can hardly be said that the petitioners had any sufficient cause which prevented them. They are a nationalised bank, having an educated staff and a legal department, having full access to the legal advice. There is no reason why they could not take asmuch as legal advice as they wanted, whether to

file the appeal or not, within time prescribed for limitation. Surprisingly, even after they were advised that they have a good case for an appeal, they did not file an appeal and spent some time in internal correspondence. The time so spent appears to be completely without any sufficient cause. It is clear that the petitioners have not acted with due care and diligence in pursuing the remedy. There is thus no sufficient cause for condoning the delay.

4. In the result, the writ petition is liable to be dismissed and is accordingly dismissed.

(S.A.BOBDE,J.)

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